IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL No. 392 /2003 Single Bench

APPELLANTS DEFENDANTS	:	**1.**	Salik Ram S/o.Shri Beeran aged about 75 years.
	:	**2A.**	Chintamani S/o.Shri Late Charku aged about 50 years.
		2B.	Balbhaghat S/o.Shri Late Charku aged about 45 years.
	:	**3.**	Bachau S/o.Shri Beeran aged about 65 years Caste Harijan.

Appellant No. 1 to 3 all R/o Village Kamleshwarpur Tahsil Seetapur Distt. Surguja (C.G.).

VERSUS

RESPONDENTS PLAINTIFFS		**1.**	Dukhi Ram S/o.Shri late Tula Ram aged about 60 years.
		2.	Gopal Ram S/o.Shri late Tula Ram aged about 50 years.
		3.	State Government. Through Collector Surguja Ambikapur proforma defendant .

Second Appeal Under Section 100 of the Code of Civil Procedure 1908

Appeal valued at Rs. 350/- Accordingly Court fees paid Rs. 357/- As in the lower appellate Court

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.392 of 2003

APPELLANTS/: (Defendants)
1. Salik Ram
2A. Chintamani
2B. Balbhaghat
3. Bachau

Versus

RESPONDENTS/: (Plaintiffs)
1. Dukhi Ram
2. Gopal Ram
3. State Government

{Second appeal under Section 100 of the Code of Civil Procedure, 1908}

Present:

Mrs. Hamida Siddique, counsel for the appellants.

Mr. A.K. Prasad, counsel for respondents No.1 & 2.

Miss Sangeeta Mishra, Panel Lawyer for the State/respondent No.3.

Single Bench: Hon'ble Mr. T.P. Sharma, J

ORDER
(12-10-2012)

1. Present second appeal has been preferred against the judgment & decree dated 17-3-2003 passed by the 1st Additional District Judge, Ambikapur in Civil Appeal No.17A/1997.

2. I have heard learned counsel for the parties, perused both the judgments & decrees and records of both Courts below.

3. In the present appeal, appellants No.2A & 2B have been shown as appellants, but they were not party before the lower appellate Court and in the second appeal, no order relating to impleading them as party has been passed.

4. As per I.A.No.6313/2003, predecessor-in-tile of appellants No.2A & 2B died in the year 2002 i.e. during the pendency of first appeal. Judgment & decree has been passed by the first appellate Court against the dead person.

5. Following substantial question of law has been framed for the decision of this appeal: -

> "Whether judgment & decree passed against dead person Charku are of nullity?"

6. At the outset, as per submissions of both the parties, Charku died during the pendency of first appeal in the year 2002 and the appeal was heard finally on 11-3-2003. This is not the case in which Charku died after closing of hearing of the appeal and before the judgment. Consequently, judgment & decree passed by the appellate Court against the dead person are of nullity. The substantial question of law formulated for the decision of this appeal is decided as positive.

7. On the basis of aforesaid decision on the substantial question of law, the appeal is allowed. Judgment & decree passed by the appellate Court are hereby set aside. The case is remitted back to the Court of 1st Additional District Judge, Ambikapur for proceeding in accordance with law. Parties shall remain in attendance between the lower appellate Court on 3-12-2012. No order as to costs.

Soma

Sd/-
T.P. Sharma
Judge